IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 11

DEWEY McLAUGHLIN, *et al.*,

Appellants,

—v.—

FLORIDA.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA

REPLY BRIEF FOR APPELLANTS

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The purpose of this reply brief is to respond to two questions posed by appellee in its brief: the first of these is "Whether the Fourteenth Amendment affects the state anti-miscegenation statutes"; the second of these is "Whether the question of the constitutional validity of state anti-miscegenation laws is present in the instant case."

I. *"Whether the Fourteenth Amendment affects the state anti-miscegenation statutes."* In pages 10-37 of appellee's brief the argument is thought to be made that the legislative history of the Fourteenth Amendment precludes the application of the Amendment to state anti-miscegenation laws. Specifically, appellee claims to have demonstrated (Brief of Appellee, pp. 35-36):

> that the purpose of the Amendment was to validate the provisions of the Civil Rights Act [of 1866] and place them beyond the power of the Judiciary to nullify, and the power of the Congress to repeal.
>
> It was the opinion of those who spoke in behalf of the Civil Rights Act that it had no application to marriage contracts, anti-miscegenation statutes or the right of suffrage.

In short, appellee's argument advances in two steps: (1) that the Civil Rights Act of 1866 (which appears as Appendix A, *infra*) was understood to have no impact on anti-miscegenation statutes, and (2) that Section 1 of the Fourteenth Amendment was understood to be coterminous with the Civil Rights Act of 1866.

Appellants acknowledge the force of the first proposition. But appellants take strong issue with the second proposition.

The simplest way to test the second proposition—under which appellee would precisely equate the guarantees of the Civil Rights Act of 1866 and those of Section 1 of the Fourteenth Amendment—is to inquire whether or not there are other forms of state-ordained racial discrimination which, like anti-miscegenation statutes, are plainly outside the ambit of the Civil Rights Act but which have been declared by this Court to be proscribed by the Amendment.

To make this test it would be appropriate to refer to the speech made by Congressman James F. Wilson of Iowa, manager of the Civil Rights bill in the House, when he brought the bill up for discussion on March 1, 1866. Congressman Wilson had this to say of Section 1 of the bill as it was originally proposed (Cong. Globe, 39th Cong., 1st Sess. 1117):

> This part of the bill . . . provides for the equality of citizens of the United States in the enjoyment of "civil rights and immunities." What do these terms mean? Do they mean that in all things civil, social, political, all citizens without distinction of race or color, shall be equal? By no means can they be so construed. Do they mean that all citizens shall vote in the several states? No. . . . Nor do they mean that all citizens shall sit on the juries, or that their children shall attend the same schools.

As the March debates wore on the wording of the bill was somewhat altered; but its substantial meaning, in the respects already noted by Congressman Wilson, did not change. On the last day of the House debate Congressman Wilson, speaking of the bill as it was finally enacted into law, again reiterated its limited impact (*id.* at 1294-95):

> My friend . . . knows, as every man knows, that this bill refers to those rights which belong to men as citizens of the United States and none other; and when he talks of setting aside the school laws and jury laws and franchise laws of the States by the bill . . . he steps beyond what he must know to be the rule of construction which must apply here, and as a result of which this bill can only relate to matters within the control of Congress.

Thus, as authoritatively expounded, the Civil Rights Act of 1866 was not to "mean that all citizens shall vote in the several States," nor "that all citizens shall sit on the juries, or that their children shall attend the same schools." For the Act would not have the effect "of setting aside the school laws and jury laws and franchise laws of the States. . . ." However, and this is the decisive point, Section 1 of the Fourteenth Amendment, which appellee seeks to equate exactly with the Civil Rights Act of 1866, has operated to set aside "the school laws" (*Missouri ex rel. Gaines* v. *Canada*, 305 U. S. 337; *Brown* v. *Board of Education*, 347 U. S. 483) and "jury laws" (*Strauder* v. *West Virginia*, 100 U. S. 303), and "franchise laws" (*Nixon* v. *Herndon*, 273 U. S. 536; *Nixon* v. *Condon*, 286 U. S. 73; cf. *Gomillion* v. *Lightfoot*, 364 U. S. 339, 349 [concurring opinion of Whittaker, *J.*]) "of the States . . . ."

In short, this Court has for decades applied the Fourteenth Amendment to problems of discrimination which

were manifestly outside the ambit of the Civil Rights Act of 1866. And so appellee's attempt to equate the limited and particularistic guarantees of the Civil Rights Act with the spacious rights enshrined in the Fourteenth Amendment must fail—unless, of course, the legislative history of the Amendment, properly understood, leads to the conclusion that this Court fell into fundamental error in each of these historic interpretations of the Amendment.

But the legislative history of the Amendment, properly understood, yields no such conclusion. The definitive study of that history is, of course, the article published by Professor Alexander M. Bickel in November, 1955, entitled "The Original Understanding and the Segregation Decision," 69 *Harv. L. Rev.* 1. In his "Summary and Conclusion," Professor Bickel traces the limited goals of the abortive Freedmen's Bureau Bill and the ultimately enacted Civil Rights Act. Then he states the case for the oft-asserted equation—repeated in the Brief of Appellee—of the Civil Rights Act with the Fourteenth Amendment. And then he shows why the attempt to tie the generalized provisions of the Amendment to the particularized provisions of the statute will not hold water. So cogent is Professor Bickel's analysis of this massive problem of constitutional interpretation that appellants take the liberty of quoting here some extended excerpts from the closing pages of Professor Bickel's article (69 *Harv. L. Rev.* at 56-65 [footnotes not included]):

> As we have seen, the first approach made by the 39th Congress toward dealing with racial discrimination turned on the "civil rights" formula. The Senate Moderates, led by Trumbull and Fessenden, who sponsored this formula, assigned a limited and well-defined meaning to it. In their view it covered the right to contract, sue, give evidence in court, and inherit, hold,

and dispose of real and personal property; also a right to equal protection in the literal sense of benefiting equally from laws for the security of person and property, including presumably laws permitting ownership of firearms, and to equality in the penalties and burdens provided by law. Certainly able men such as Trumbull and Fessenden realized that each of the seemingly well-bounded rights they enumerated carried about it, like an upper atmosphere, an area in which its force was uncertain. Thus it is clear that the Moderates wished also to protect rights of free movement, and a right to engage in occupations of one's choice. They doubtless considered that their enumeration somehow accomplished this purpose. Similarly, the Moderates often argued that one of the imperative needs of the time was to educate, to "elevate," to "Christianize" the Negro; indeed, this was almost universally-held doctrine, from which even Conservatives like Cowan and Democrats like Rogers did not dissent. Hence one may surmise that the Moderates believed they were guaranteeing a right to equal benefits from state educational systems supported by general tax funds. But there is no evidence whatever showing that for its sponsors the civil rights formula had anything to do with unsegregated public schools; Wilson, its sponsor in the House, specifically disclaimed any such notion. Similarly, it is plain that the Moderates did not intend to confer any right of intermarriage, the right to sit on juries, or the right to vote.

. . .

The Civil Rights Bill itself, as brought from the Senate to the House, split the alliance of various shades of Moderates and Radicals which constituted the Republican majority. The bill was presented to the House as a measure of limited objectives, following Trum-

bull's views. But a substantial number of Republicans were troubled by the issue of constitutionality. Others were uneasy on policy grounds about the reach of section I, but inclined to believe that the bill could be rendered constitutional by amendment, and, in any event, out of mixed motives at which one can only guess, conquered their apprehensions and voted for it in the end. Bingham, whose position was in this instance entirely self-consistent, thought the bill incurably unconstitutional, its enforcement provisions monstrous, and the civil rights guaranty of very broad application and unwise. The concession these Republicans wrung from the leadership was the elimination of the civil rights formula and thus the avoidance of possible "latitudinarian" construction. The Moderate position that the bill dealt only with a distinct and limited set of rights was conclusively validated.

Against this backdrop, the Joint Committee on Reconstruction began framing the fourteenth amendment. In drafting section I, it vacillated between the civil rights formula and language proposed by Bingham, finally adopting the latter. Stevens' speech opening debate on the amendment in the House presented section I in terms quite similar to the Moderate position on the Civil Rights Bill, though there was a rather notable absence of the disclaimers of wider coverage which usually accompanied the Moderates' statements of objectives. A few remarks made in the Senate sounded in the same vein. For the rest, however, section I was not really debated. Rogers, whose remarks are always subject to heavy discount, considering his shaky position in the affections of his own party colleagues, raised "latitudinarian" alarms. One or two other Democrats in the House did so also. But more and more, debate turned on section 3 and not much else. The focus of attention is well indicated by Stevens'

brief address immediately before the first vote in the House. In this atmosphere, section 1 became the subject of a stock generalization: it was dismissed as embodying and, in one sense for the Republicans, in another for the Democrats and Conservatives, "constitutionalizing" the Civil Rights Act.

The obvious conclusion to which the evidence, thus summarized, easily leads is that section 1 of the fourteenth amendment, like section 1 of the Civil Rights Act of 1866, carried out the relatively narrow objectives of the Moderates, and hence, as originally understood, was meant to apply neither to jury service, nor suffrage, nor antimiscegenation statutes, nor segregation. . . .

If the fourteenth amendment were a statute, a court might very well hold, on the basis of what has been said so far, that it was foreclosed from applying it to segregation in public schools. The evidence of congressional purpose is as clear as such evidence is likely to be, and no language barrier stands in the way of construing the section in conformity with it. But we are dealing with a constitutional amendment, not a statute. The tradition of a broadly worded organic law not frequently or lightly amended was well-established by 1866, and, despite the somewhat revolutionary fervor with which the Radicals were pressing their changes, it cannot be assumed that they or anyone else expected or wished the future role of the Constitution in the scheme of American government to differ from the past. Should not the search for congressional purpose, therefore, properly be twofold? One inquiry should be directed at the congressional understanding of the immediate effect of the enactment on conditions then present. Another should aim to discover what if any thought was given to the long-range effect, under future circumstances, of provisions necessarily intended for permanence.

That the Court saw the need for two such inquiries with respect to the original understanding on segregation is clearly indicated by the questions it propounded at the 1952 Term. The Court asked first whether Congress and the state legislatures contemplated that the fourteenth amendment would abolish segregation in public schools. It next asked whether, assuming that the immediate abolition of segregation was not contemplated, the framers nevertheless understood that Congress acting under section 5, or the Court in the exercise of the judicial function would, in light of future conditions, have power to abolish segregation.

With this double aspect of the inquiry in mind, certain other features of the legislative history—not inconsistent with the conclusion earlier stated, but complementary to it—became significant. Thus, section 1 of the fourteenth amendment, on its face, deals not only with racial discrimination, but also with discrimination whether or not based on color. This cannot have been accidental, since the alternative considered by the Joint Committee, the civil rights formula, did apply only to racial discrimination. Everyone's immediate preoccupation in the 39th Congress—insofar as it did not go to partisan questions—was, of course, with hardships being visited on the colored race. Yet the fact that the proposed constitutional amendment was couched in more general terms could not have escaped those who voted for it. And this feature of it could not have been deemed to be included in the standard identification of section 1 with the Civil Rights Act. Again, when it rejected the civil rights formula in reporting out the abortive Bingham amendment, the Joint Committee elected to submit an equal protection clause limited to the rights of life, liberty, and

property, supplemented by a necessary and proper clause. Now the choice was in favor of a due process clause limited the way the equal protection clause had been in the earlier draft, but of an equal protection clause not so limited: equal protection "of the laws." Presumably the lesson taught by the defeat of the Bingham amendment had been learned. Congress was not to have unlimited discretion, and it was not to have the leeway represented by "necessary and proper" power. One would have to assume a lack of familiarity with the English language to conclude that a further difference between the Bingham amendment and the new proposal was not also perceived, namely, the difference between equal protection in the rights of life, liberty, and property, a phrase which so aptly evoked the evils uppermost in men's minds at the time, and equal protection of the laws, a clause which is plainly capable of being applied to all subjects of state legislation. . . .

These bits and pieces of additional evidence do not contradict and could not in any event override the direct proof showing the specific evils at which the great body of congressional opinion thought it was striking. But perhaps they provide sufficient basis for the formulation of an additional hypothesis. It remains true that an explicit provision going further than the Civil Rights Act could not have been carried in the 39th Congress; also that a plenary grant of legislative power such as the Bingham amendment would not have mustered the necessary majority. But may it not be that the Moderates and the Radicals reached a compromise permitting them to go to the country with language which they could, where necessary, defend against damaging alarms raised by the opposition, but which at the same time was sufficiently elastic to permit reasonable future advances? This is thoroughly consistent with rejection of the civil rights formula and its implications. That formula could not serve the purpose of such a compromise.

It had been under heavy attack at this session, and among those who had expressed fears concerning its reach were Republicans who would have to go forth and stand on the platform of the fourteenth amendment. Bingham, of course, was one of these men, and he could not be required to go on the hustings and risk being made to eat his own words. If the party was to unite behind a compromise which consisted neither of an exclusive listing of a limited series of rights, nor of a formulation dangerously vulnerable to attacks pandering to the prejudices of the people, new language had to be found. Bingham himself supplied it. It had both sweep and the appearance of a careful enumeration of rights, and it had a ring to echo in the national memory of libertarian beginnings. To put it another way, the Moderates, with a bit of timely assistance from Fessenden's varioloid, consolidated the victory they had achieved in the Civil Rights Act debate. They could go forth and honestly defend themselves against charges that on the day after ratification Negroes were going to become white men's "social equals," marry their daughters, vote in their elections, sit on their juries, and attend schools with their children. The Radicals (though they had to compromise once more on section 3) obtained what early in the session had seemed a very uncertain prize indeed: a firm alliance, under Radical leadership, with the Moderates in the struggle against the President, and thus a good, clear chance at increasing and prolonging their political power. In the future, the Radicals could, in one way or another, put through such further civil rights provisions as they thought the country would take, without being subject to the sort of effective constitutional objections which haunted them when they were forced to operate under the thirteenth amendment....

It is such a reading as this of the original understanding, in response to the second of the questions propounded by

the Court, that the Chief Justice must have had in mind when he termed the materials "inconclusive." For up to this point they tell a clear story and are anything but inconclusive. From this point on the word is apt, since the interpretation of the evidence just set out comes only to this, that the question of giving greater protection than was extended by the Civil Rights Act was deferred, was left open, to be decided another day under a constitutional provision with more scope than the unserviceable thirteenth amendment. Some no doubt felt more certain than others that the new amendment would make possible further strides toward the ideal of equality. That remained to be decided, and there is no indication of the way in which anyone thought the decision would go on any specific issue. It depended a good deal on the trend in public opinion. Actually, one of the things the Radicals had contended for throughout the session, and doubtless considered that they gained by the final compromise, was time and the chance to educate the public. Such expectations as the Radicals had were centered quite clearly on legislative action. At least this holds true for Stevens. These men were aware of the power the Court could exercise. They were for the most part bitterly aware of it, having long fought such decisions as the *Dred Scott* case. Most probably they had little hope that the Court would play a role in furthering their long-range objectives. But the relevant point is that the Radical leadership succeeded in obtaining a provision whose future effect was left to future determination. The fact that they themselves expected such a future determination to be made in Congress is not controlling. It merely reflects their estimate that men of their view were more likely to prevail in the legislature than in other branches of the government. It indicates no judgment about the powers and functions properly to be exercised by the other branches.

> Had the Court in the *Segregation Cases* stopped short of the inconclusive answer to the second of its questions handed down at the previous term, it would have been faced with one of two unfortunate choices. It could have deemed itself bound by the legislative history showing the immediate objectives to which section I of the fourteenth amendment was addressed, and rather clearly demonstrating that it was not expected in 1866 to apply to segregation. The Court would in that event also have repudiated much of the provision's "line of growth." For it is as clear that section I was not deemed in 1866 to deal with jury service and other matters "implicit in . . . ordered liberty" to which the Court has since applied it. Secondly, the Court could have faced the embarrassment of going counter to what it took to be the original understanding, and of formulating, as it has not often needed to do in the past, an explicit theory rationalizing such a course. The Court, of course, made neither choice. It was able to avoid the dilemma because the record of history, properly understood, left the way open to, in fact invited, a decision based on the moral and material state of the nation in 1954, not 1866.

The present relevance of Professor Bickel's masterly study is abundantly clear: The Civil Rights Act of 1886 was not intended to apply to laws excluding Negroes from juries or from the franchise, denying them admission to public schools or relegating them to segregated schools, or forbidding them to marry their white fellow-citizens. But this Court has found—and properly so—that racial discriminations in jury service, the franchise, and public schools are all proscribed by the Fourteenth Amendment. The instant case calls for the application of the Amendment to antimiscegenation statutes. And, as Professor Bickel pointed out only two years ago, "the constitutionality of antimiscegenation statutes . . . would surely seem to be

governed by the principle of the *Segregation Cases.* . . ." *Bickel, The Least Dangerous Branch*, p. 71.

II. *"Whether the Question of the Constitutional Validity of State Anti-Miscegenation Laws Is Present in the Instant Case."* Appellants do not propose, in this reply brief, to devote further attention to the question whether there was testimony on the basis of which the jury could have concluded—had the trial judge's instruction not taken the issue out of the case—that appellants had contracted a common law marriage. Although opinions may differ as to how compelling the relevant testimony was, appellee's own brief makes it plain that a juror hearing the testimony of Mrs. Goodnick and Mrs. Kaabe might reasonably have concluded that appellants were married—or that, at the very least, the prosecution had not proved the non-existence of a matrimonial relationship beyond a reasonable doubt.

What appellants wish briefly to address themselves to is appellee's ambiguous intimation that the constitutional correctness of the trial judge's instruction ruling out the issue of common law marriage is not properly before this Court.

Appellee's intimation to this effect appears at pages 52 to 53 of its brief. Appellee there relies on Section 918.10 of the Florida Statutes for the suggestion that the validity of the instruction was not before the Florida Supreme Court (and hence is not before this Court) because it had not been expressly challenged "before the jury retire[d] to consider its verdict."

The ambiguity of appellee's intimation arises from appellee's apparent contrary concession on page 6 of its brief:

> Appropriate appeal was taken to the Florida Supreme Court (R. 1). Such appeal initially raised all errors presently submitted to this Court (R. 12); however, in briefing the questions and in petitioning for rehearing, the appellants abandoned their position that the statute under which they were prosecuted was vague and indefinite (R. 103). (See also appendix "A" to appellee's brief wherein there is contained a photostatic copy of the only brief presented to the Florida Supreme Court by the appellants.)

In short, appellee there acknowledges that all the questions now urged by appellants were properly raised by an "appropriate appeal". And the only one of those questions said to have fallen by the wayside at a later stage was the vagueness problem, and that only by non-inclusion in the brief and the petition for rehearing. Moreover, the brief filed by appellants in the Florida Supreme Court—which appellee has added as an appendix to its brief in this Court —argued the invalidity of the instruction at length (Brief of Appellee, Appendix A pages 13-17). Finally, it may be noted that in opposing appellant's petition for rehearing in the Florida Supreme Court, appellee expressly urged that Court to rule that the validity of the challenged instruction was not properly before it—and the Florida Supreme Court denied rehearing without opinion.

If, nevertheless, appellee is to be understood as still urging that Section 918.10 of the Florida Statutes does bar consideration of the challenged instruction—and hence of the anti-miscegenation statutory and constitutional provisions on which it rests—it then seems appropriate to point out that Section 918.10 does not stand alone:

Section 924.32 (1) of the Florida Statutes provides as follows:

> Upon an appeal by either the State or the defendant the appellate court shall review all rulings and orders appearing in the appeal papers insofar as it is necessary to do so in order to pass upon the grounds of appeal. The court shall also review all instructions to which an objection was made and which are alleged as a ground of appeal, and the sentence where there is an appeal therefrom. The court may also in its discretion, if it deems the interests of justice to require, review any other thing said or done in the cause which appears in the appeal papers including instructions to the jury. The reception of evidence to which no objection was made shall not be construed to constitute a ruling by the court.

The discretionary authority conferred on an appellate court by the last-quoted statutory provision has recently been commented on by the Florida Supreme Court in *Burnette* v. *State*, 157 So. 2d 65, 67, and by the Florida District Court of Appeal in *Hamilton* v. *State*, 152 So. 2d 793, 795 and in *Forcier* v. *State*, 133 So. 2d 336, 337. The way in which this discretion is utilized by the Florida courts is indicated by the following commentary appearing in the section on "Appeals" in volume 2 of *Florida Jurisprudence* (1963) pp. 422-23 (footnotes omitted):

> The giving of instructions is subject to the rule that while timely objection should be made, errors of the trial court in this regard may be reviewed on appeal in the absence of an objection if the error is so fundamental as to justify such action, or when the appellate court, in its discretion, deems the interests of justice to so require. Whether the omission of the court to instruct on a particular point will be regarded as fundamental depends on the evidence in the case and the seri-

> ousness of the charge involved. Thus, the failure to instruct the jury on the weight to be given a confession in a capital case, where the conviction rests primarily on that confession, may justify reversal though no objection was interposed thereto. On the other hand, the failure to give such an instruction in an armed robbery case, where there is evidence other than the confession in support of the conviction, will not compel a reversal if no objection thereto was raised at the trial. But where the instructions given by the court erroneously take from the jury an essential element of the crime charged by the prosecution, the error is so fundamental that the conviction should be reversed even though no objection was made at the time they were given.

Appellants submit that the instant case exactly fits within the last sentence of the quoted paragraph from *Florida Jurisprudence*. For the trial court's instruction removing the common law marriage issue from the jury's consideration followed immediately after the trial court had instructed the jury that it was incumbent on the State to prove, *inter alia*, "that defendants were not married to each other at the time of the alleged offense" (R. 93). Thus, if, as appellants contend, the instruction excluding the common law marriage issue rested upon the unconstitutional premise that Florida's anti-miscegenation laws were valid, the present case is exactly one in which "the Court erroneously [took] from the jury an essential element of the crime charged by the prosecution . . . " In such a situation Section 924.32 (1) makes it at least proper for a Florida appellate court to review the challenged instruction without regard for whether it was specifically objected to before

the jury retired to consider its verdict. Indeed it may well be incumbent upon a Florida appellate court to exercise this revisory authority where the trial judge's intrusion upon the jury's domain is as flagrant as it was in the instant case. This may be the teaching of the Florida Supreme Court in the case of *Henderson* v. *State*, 20 So. 2d 649, 651:

> This instruction invaded the province of the jury to the extent of taking from it the determination of every element of the offense charged except that of the intent of the accused. It is elementary that every element of a criminal offense must be proved sufficiently to satisfy the jury (not the court), of its existence.
>
> It is contended by the State that while the charge supra is clearly erroneous, the error is waived by reason of the provisions of . . . subparagraph 4, Sec. 918.10, Florida Statutes 1941, same F. S. A.
>
> We cannot agree with this view. We must bear in mind the due process clause of both our State and Federal Constitutions. We are convinced that due process of law contemplates trial in a criminal case by a fair jury, with full evidence and correct charges or instructions to the jury as to the law. Of these elements of fundamental safeguard, an accused may not be deprived either by statute or rule of court. See Lawson v. State, 125 Fla. 335, 169 So. 739, and cases there cited.
>
> When the provisions of statutes collide with provisions of the Constitution the statute must give way.

At all events, whether or not it would have been incumbent on a Florida appellate court to review so crucial an instruction, even though not objected to, it is manifest from

the foregoing discussion that a Florida appellate court has ample discretionary authority to review the instruction in such an instance. Cf. *Williams* v. *Georgia*, 349 U. S. 375.

Respectfully submitted,

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APPENDIX A

Civil Rights Act of 1866

14 Stat. 27

Chap. XXXI.—An Act to protect all Persons in the United States in their Civil Rights, and furnish the Means of their Vindication.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States; and such citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall have the same right, in every State and Territory in the United States, to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens, and shall be subject to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding.

Sec. 2. And be it further enacted, That any person who, under color of any law, statute, ordinance, regulation, or custom, shall subject, or cause to be subjected, any inhabitant of any State or Territory to the deprivation of any right secured or protected by this act, or to different punishment, pains, or penalties on account of such person having at any time been held in a condition of slavery or

involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, or by reason of his color or race, than is prescribed for the punishment of white persons, shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by fine not exceeding one thousand dollars, or imprisonment not exceeding one year, or both, in the discretion of the court. . . .